

**Central Administrative Tribunal
Principal Bench**

11.08.2005.

MA No.1518/2004

In

OA No.288/2003

Gianendra Kumar & Another

-Applicants

-Versus-

Union of India & Others

-Respondents

Present: Shri P.P. Khurana, Senior Counsel for applicants.

Shri H.K. Gangwani, Counsel for respondents.

MA-1518/2004 is an outcome of direction issued in OA-1432/2004 on 4.6.2004 when applicant had filed an application for promotion as AE under LDCE quota. The following directions have been issued:

"5. We would have entertained the original application and gone into the merits of the same but the sequence of events, which we have referred to above, clearly show that it has already been decided by this Tribunal in OA-288/03 that the decision so passed in Ajmer Singh's case (supra) will be applicable in that OA. Once the Ajmer Singh's case has been decided, necessarily the applicants need not to file the present original application. The remedy in the first instance would be available for them by filing a miscellaneous application.

6. Subject to aforesaid, the present application is disposed of."

2. Learned Senior Counsel Shri P.P. Khurana contends that in OA-288/2003 by an order dated 30.5.2003 directions have been issued to the respondents to follow the decision in **Ajmer Singh and another v. Govt. of India through Director General, CPWD**, OA-1874/2001, disposed of on 7.8.2003. In this context

it is stated that in the reply filed in OA-288/2003 respondents have admitted that 78 vacancies are earmarked for LDCE quota for the year 1988-89, yet filling up only 12 vacancies is a contradictory stand. As such, the decision in **Ajmer Singh** (supra), which has been followed in the present OA, in which MA has been filed, has not been followed in true letter and spirit.

3. Whereas, learned counsel for respondents Shri H.K. Gangwani filed a reply and stated that in compliance of the directions in **Ajmer Singh** (supra) the total number of vacancies instead of 391 have been increased to 424 and 22 persons had already been adjusted against supernumerary posts to avoid reversion. In this view of the matter it is stated that quota of 1:1 between seniority and LDCE has been maintained. In nut shell what has been stated is that the Tribunal's orders have been duly complied with.

4. We have carefully considered the rival contentions of the parties and perused the material on record. In the wake of directions in OA-1432/2004 where applicants have been given liberty to assail their grievance in an MA, by issuing any direction as to filling up of the vacancies and maintenance of quota where the directions purportedly complied with by the respondents are stated to be in compliance of **Ajmer Singh's** case (supra) we would be sitting in appeal over the decision in **Ajmer Singh's** case.

5. As regards calculation of vacancies and rights of applicants to earmark vacancies, the issue is contentious. As such, we are of the considered view that the same cannot be agitated in a

changed situation where respondents have calculated the vacancies in the present MA. Accordingly, we dispose of the present MA with liberty to applicants to assail their grievance in original proceedings.

S. Raju
(Shanker Raju)
Member(J)

V.K. Majotra
(V.K. Majotra) 11.8.05
Vice-Chairman(A)

'San.'